INDEX

No. 35946.

Supreme Court of the United States

J. W. HALL, APPELLEE,

VS.

CHARLES B. EELLS, APPELLANT.

APPEAL FROM THE DISTRICT COURT OF LINN COUNTY.
HONORABLE HARRY W. FISHER, JUDGE.

ABSTRACT OF APPELLANT.

Motion overruled April 20, 1943.

Notice of appeal filed with the Clerk of the Court April 22, 1943.

C. B. EELLS,
707 R. A. Long Building,
Kansas City, Missouri.

Motion.

Comes now Charles B. Eells, defendant in the above-captioned cause, and moves the court to set aside as wholly void the following orders and judgments rendered therein:

1. Temporary injunction filed March 5, 1940.

2. Permanent injunction filed March 15, 1940.

3. Order of contempt and punishment filed April 7, 1941.

for the following reasons, to wit:

No. 1. That plaintiff, J. W. Hall, of 1121 Pacific, Kansas City, Kansas (hereinafter called the Kansas Hall), is not the real party in interest and a stranger in case No. 8961 in the Linn County, Kansas, District Court (hereinafter called the prior action) because the plaintiff in the prior action is J. W. Hall, a resident of Jackson County, Missouri (hereinafter called the Missouri Hall), whose postoffice address is Commerce Building, Kansas City, Missouri, and judgment in said prior action was granted to the Missouri Hall and not to the Kansas Hall.

The first allegation of the prior action states:

> That said plaintiff is a resident of Jackson County, Missouri, and that his postoffice address is Commerce Building, Kansas City, Missouri.

and the first allegation in the above-captioned cause states:

> That he (plaintiff) is a resident of Wyandotte County, Kansas.

The affidavit for summons by publication in the prior action states that all allegations contained in the petition are true and in an affidavit of the Kansas Hall filed October 12, 1939, he states:

> "That—since about 1900 or prior thereto, he has been a resident of Wyandotte County, Kansas, and

never at any time resided in Jackson County, Missouri. That for the past twenty seven (27) years he has operated a grocery store at 1121 Pacific, Kansas City, Kansas."

These two Halls are, therefore, clearly identified; the Missouri Hall in a space 100 x 100 feet in the business district of Kansas City, Missouri, and residing in Jackson County, Missouri, and the Kansas Hall, a grocer, residing in Wyandotte County, Kansas, since 1900 A. D.

In *Grolier Society* v. *Foster*, 110 Kan. 306, it is said by Justice Dawson:

> Suppose the defendant has a cross-action or counterclaim and should establish it and get judgment, where or to whom should he look for satisfaction.

And holds

> "There should be no doubt about the identity or about the legal capacity of the plaintiff."

Similarly, if this defendant had obtained judgment in the prior action on a cross-bill, he would have to look to the Missouri Hall and not to the Kansas Hall for satisfaction.

In a parallel case where judgment is granted to a Missouri party instead of a Kansas party, Justice Smith says in *Union Central* v. *Irrigation Co.*, 141 Kan. 675, syllabus:

> It is held that the defendant in the action was not a party to the prior action and is not bound by the judgment.

and further on (pp. 676-7):

> This case thus resolves itself into a simple one where the real party in interest was not made a party to the action.

The plaintiff in this case is nowhere named or referred to in the prior action. It should follow, then, that the same rule applies to a disinterested plaintiff. "Every action must be prosecuted in the name of the real party" (R. S. 60-401).

Furthermore, as both parties to the prior action are residents of the state of Missouri, an order of the Linn County, Kansas, District Court filed July 26, 1935, "holds and decides that said judgment and decree—should stand as valid and binding on all parties." This order, therefore, eliminates the Kansas Hall as a party to the prior action, yet he insists on worming in as a party and dummy under the protective and immunized wing of the Commerce Trust Company. In his signed financial statement given to Dun and Bradstreet he disclaims ownership of any farm among his assets and they, after careful investigation, report his net worth at $1,000 to $2,000 (see Dun and Bradstreet's Reference Book No. 1, Volume 321, January, 1943, page 920).

No. 2. All orders and judgments in the above-captioned cause should further be set aside as void because there is no real estate in Linn County, Kansas, that carries the legal description set forth in plaintiff's petition, as follows:

> W. 1/2 N. E. 1/4, N. W. 1/4, S. E. 1/4, and E. 1/2 S. W. 1/4, all in Sec. 32, Twp. 20, Range 24.

in that it does not state whether the land lies in range east or west of the sixth principal meridian.

In *Cohen* v. *Trowbridge,* 6 Kan. 392, it is said:

> Where notice describes the land as "N. E. 1/4 of Sec. 9, Twp. 5, range 18" without stating whether it

> was range east or west of the sixth principal meridian is not sufficiently certain and judgment rendered on such notice was properly set aside.

In *Cackly* v. *Smith*, 38 Kan. 451, the court says:

> In the early case of *Cohen* v. *Trowbridge* (6 Kan. 385), this precise question was examined and determined. It described the land as the N. E. 1/4, Sec. 9, Twp. 5, Range 18, without stating whether it was the range east or west of the sixth principal meridian either of which would be in the state. * * * In *Rapp* v. *Kyle*, 26 Kan. 89, the same question was under consideration and the court remarked that it had no disposition to limit the scope or authority of the decision in *Cohen* v. *Trowbridge, Supra.*

No. 3. All orders and judgments in the above-captioned cause should be set aside as void for the further reason that no legal trial was held on March 15, 1940, when an alleged temporary injunction was made permanent. This temporary injunction was rendered by default when six days before the hearing, the then judge instructed the clerk by telephone from Fort Scott not to issue subpoenas called for on defendant's praecipe. The clerk, the defendant and his attorney were led to believe that the hearing would be continued as requested and did not appear. Ten days later hearing was called to make the temporary injunction permanent. Defendant and his attorney were present and protested that their witnesses had not been subpoenaed, that the plaintiff was not a party in interest and that the temporary injunction was void in the absence of a bond as made mandatory by law (R. S. 60-1110 and 60-1114). However, the court arbitrarily made the temporary injunction permanent without hearing evi-

dence or seeing exhibits. The court reporter was not present. The plaintiff sat in the back seat of the court room practically hidden from view and refused to take the stand and produce evidence to substantiate his charges which are grossly exaggerated and mostly false.

The third paragraph of the permanent injunction reads as follows:

> The court having fully heard the evidence produced by both plaintiff and defendant in open court and having duly considered the law and the evidence finds * * *.

This is an absolutely false statement prepared by plaintiff's counsel and we challenge them to produce an abstract of such alleged evidence. The above quoted statement, no doubt, misled the high court to say in *Hall* v. *Eells,* 124 Pac. 2d 444:

> "On March 15, 1940, after having heard evidence introduced by the plaintiff and defendant the court issued a permanent injunction * * *"

Furthermore, a motion filed by defendant February 10, 1940, was not disposed of reading in part:

> Defendant further asks the court to order the plaintiff to post additional security for the costs herein in such an amount as to the court may seem sufficient and proper.

No. 4. All judgments and orders in above mentioned cause should be set aside for the reason a valid assignment was not received by plaintiff of the note and mortgage in question. Said assignment (exhibit D of the prior action) does not set out the full name and post office

address of the assignee as required by law (R. S. 67-319) nor was the corporate seal of the Commerce Trust Company, a corporation, affixed as required by law (67-318) nor was there appended any authority of its board of directors validating the instrument. Verified copy follows:

ASSIGNMENT OF MORTGAGE
Commerce Trust Company
to
J. W. Hall

State of Kansas, Linn County, SS

Filed for record on the 24th day of March A D 1932 at 8:45 o'clock A M and duly recorded in Book 90 of mortgages at page 427.

Assignment of Mortgage.

Know all men by these presents - That Commerce Trust Company, a corporation, of Kansas City, Missouri, for value received, does hereby sell, assign, transfer, set over and convey unto J. W. Hall all its right, title and interest of, in and to that certain mortgage. . . .

In witness whereof, Commerce Trust Company has caused this instrument to be signed by its vice-president and its *common seal* to be affixed hereto this 12th day of July 1926

Commerce Trust Company
by C. W. Shelton,
vice-president

(No Seal)

State of Kansas, County of Linn SS

I hereby certify that the above is a true copy of assignment of mortgage as same appears of record in

> the office of the register of deeds of Linn County, Kansas, this 2nd day of August 1934. And I further certify that the words "No Seal" was written upon the record by the Register of Deeds identically as it appears in the above copy of assignment of mortgage.
>
> (Signed, Frances M. Wuttke,
> Bonded Abstractor.

> When corporate seal is not attached, the authority of the officers to execute the instrument must be otherwise shown (*Fischer* v. *Lukens,* 182 Pac. 967).

It will be observed that the said assignment does not give the full name and postoffice address of the assignee nor the corporate seal affixed. The petition in the prior action alleges that the assignment on which it is based was given March 19, 1926, and offered for record on March 18, 1932, exactly six years later, but it was never recorded, while the assignment quoted above offered as exhibit "D" of the prior action was made July 12, 1926, and recorded on March 24, 1932, or 5 years, 8 months and 12 days thereafter. The assignment relied upon, therefore, is not their exhibit "D" which was recorded at practically the same time the prior action was filed. This is a strange and peculiar method of handling such a matter, all the more so by a corporation as powerful and efficient as the Commerce Trust Company. In *Baldwin* v. *Whitcomb,* 71 Mo. 651, it is said:

> Any unusual clause in an instrument, any unusual method of transacting business apparently done with the view for effect and to give to the transaction an air of honesty, is of itself a badge of fraud.

No assignment in law has been made to the Kansas Hall. Furthermore, the grantee in the sheriff's deed,

picked up by a fieldman for the Commerce Trust Company, is J. W. Hall without showing the county or state of his residence. The sheriff's deed was not exhibited at the hearing. Even if it was, it would not be *prima facie* evidence of its regularity (60 Kan. 239).

No. 5. The order of punishment for contempt filed April 7, 1941, should be set aside as void because the said order finds defendant guilty of violating the permanent injunction, the 4th paragraph of which reads as follows:

> That the defendant Charles B. Eells violated the *permanent* injunction and finds said defendant Charles B. Eells guilty of contempt of the injunctive order.

Now, the defendant has never been accused of violating the *permanent* injunction, since the second paragraph of the "Motion for Citation" filed December 20, 1940, reads:

> That on the 24th day of February, 1940, upon application and hearing thereof, the court made an order restraining the defendant.

and further on in the 4th paragraph:

> That, notwithstanding the premises the defendant has wholly disregarded the said order of the court.

In the "Affidavit for Contempt Proceedings" filed December 20, 1940, it says in the 1st paragraph:

> That on the 24th day of February, 1940, an order was duly and regularly made in said cause.

and in the 3rd paragraph it is said:

> That said defendant Charles B. Eells violated the order of this court.

In the "Accusation" filed December 20, 1940, it is said:

> Now comes the plaintiff J. W. Hall * * * and accuses the defendant Charles B. Eells of having disobeyed and violated the orders of this court, in this, to-wit: that on the 24th day of February, 1940, upon a hearing of a motion in the above entitled cause, and after being fully advised in the premises, the court made and entered an order directing the said Charles B. Eells * * *

Here a copy of a temporary injunction is quoted in full, said temporary injunction ending as follows:

> It is further ordered that the restraining order be in full force and effect until further order of the court herein.

The "Accusation" then goes on to say:

> That said order has not been reversed, modified or set aside, but has at all times since last mentioned date (February 24, 1940) and still is (December 20, 1940) in full force and effect.

The above statement is wholly false since "the further order of the court" of March 15, 1940, reversed and set aside the alleged temporary injunction of February 24th, 1940. This defendant cannot be legally accused of violating an order after it has been dead for over 9 months. The *permanent* injunction is nowhere mentioned or referred to in the "Accusation," the "Citation" or the "Affidavit." This defendant is, therefore, accused of violating a temporary injunction that had been automatically dissolved by a further order of the court.

This confusion of dates, no doubt, led the high court to say in *Hall* v. *Eells*, 124 Pac. 2d 444:

While the acts on account of which the accusation was filed took place between the time the restraining order and the permanent injunction was issued, the restraining order and injunction were practically identical.

They were practically identical with the exception that the temporary injunction provided that it would be voided by a further order of the court. If the acts as stated above took place between the time the restraining order and the permanent injunction were issued, the accusation would have had to have been filed prior to March 15, 1940, while as a matter of fact the accusation was not filed until 9 months and 5 days later or on December 20, 1940. Besides, the punishment was for violating a permanent injunction and not, as the high court thought, a restraining order.

Furthermore, the "Citation," the "Affidavit" and the "Accusation" all allege and accuse this defendant of violating a restraining order issued February 24th, 1940. This defendant states that no such restraining order or injunction was issued on February 24th, 1940, as this date fell on Saturday which was not a court day in Linn County, Kansas, and no court was in session on that date. Defendant is, therefore, accused of violating an order that had not yet been issued.

No. 6. The permanent injunction filed March 15, 1940, should be set aside as void for the reason the temporary injunction was perpetuated before it had been fully and regularly matured for final hearing.

Only 7 days (excluding Sunday) elapsed from the time the alleged temporary injunction became binding on notice to defendant on March 7, 1940, thus giving insufficient

time to study the order and prepare, file and give legal notice to plaintiff of a motion to dissolve by reasons of errors and irregularities.

No. 7. All judgments and orders in the above-captioned cause should be set aside as void for the reason no bond was furnished by the plaintiff as required by law.

> No injunction, unless otherwise provided by statute, shall operate until the party obtaining the same shall give an undertaking (R. S. 60-1110).
>
> An injunction binds the party from the time he has notice thereof and the undertaking required by the applicant therefor is filed with the clerk (R. S. 60-1114).

The defendant states that no bond was furnished by the plaintiff as required by law. The injunction, therefore, cannot legally operate or bind this defendant; R. S. 60-1108 does not apply.

No restraining order, in its true meaning, was issued in this case. No emergency existed. The time when a restraining order would have been effective, and in which a bond is discretionary, was from the date the application was filed on November 18, 1939, until the application was heard on February 29, 1940. During this lapse of three months, 17 days this defendant was not under restraint and it would have been physically impossible to violate it in the 8 days between the time it became effective and the issuing of the permanent injunction. The Supreme Court defines "restraining order" and "temporary injunction" in *State* v. *Johnson*, 79 Kan. 615, as follows:

> While often used synomously, the terms "temporary injunction" and "restraining order" are properly distinguished as follows: a restraining order is effective only until an application shall be heard; a temporary injunction is a restraining order effective until the trial of the action in which it is issued. The effect, and not the name by which the order may be called, determines to which of the classes it properly belongs.

The Supreme Court in *Hall* v. *Eells*, 124 Pac. 2d 444, says:

> It is true that G. S., 1935, 60-1108, provides that the court or judge may require a bond to secure payment of damages to the defendant when a restraining order is allowed. This is a matter within the discretion of the trial court.

The foregoing, of course, applies only to a restraining order in its strict sense as defined above in 79 Kan. 615. As no such restraining order was issued in this case, it has no application to the temporary injunction filed on March 5, 1940, in which a bond is mandatory and since a temporary injunction, in the absence of a bond, has no operation, it cannot be converted into a valid permanent injunction.

As authority we cite the following:

State v. *Board of Com.*, 42 Kan. 739:

> This bond was not given and the order therefore inoperative and void and was properly ignored by the sheriff.

In re Sharp, 87 Kan. 507:

> But section 254 of the code provides that "no injunction shall operate, until the party obtaining the

> same shall give an undertaking" * * * When a temporary injunction is allowed upon the execution of a bond in a given amount to be approved by the clerk, such injunction, if issued without such bond, is wholly void.

Newbern v. *Pipe Line*, 126 Kan. 78:

> We have a statute (R. S. 60-1110) which provides that no injunction shall operate unless the party obtaining the same shall give bond.

State v. *Board of Com.*, 42 Kan, 739, is cited as authority when it is said in 32 C. J., p. 312, Sec. 509:

> Statutes providing for the giving of a bond as security for the issuance of an injunction are usually mandatory in character and so construed; and where this is the case the court cannot dispense with the filing of a bond as preliminary to the issuance of a temporary injunction.

The 13th abridged citation under R. S. 1110 states:

> "Failure to give undertaking; defendant not punishable for contempt."

Yet this defendant was ordered punished in direct contradiction of the law and authorities above mentioned. The defendant challenges the plaintiff and the world to cite statutes or high court opinions reversing the above decisions.

It is said in *Mead* v. *Anderson*, 40 Kan. 203:

> It has often been held by this court that the refusing or granting of a temporary injunction is largely in the discretion of the court or judge, and for that reason close and intricate questions will not be reviewed and the action of the court or judge reversed,

unless it shall appear that the judgment or order is erroneous.

But the foregoing opinion relates only to a case where the real party is concerned and bond furnished by the plaintiff. However, the importation of a different plaintiff contrary to law heretofore mentioned (R. S. 60-401); the granting of a temporary injunction in the absence of a bond contrary to R. S. 60-1110 and 60-1114; the accusation of a defendant for violating a temporary injunction which had previously been dissolved and punishing him for violating a permanent injunction, of which he has not been legally accused, are certainly not close and intricate questions.

In *State* v. *Pierce*, 51 Kan. 241, it is said:

> "The proper mode of obtaining relief from the consequences of errors and irregularities in the obtaining or issuing of an injunction order that do not render the order absolutely void is to apply to the court or judge to correct them, and not by disobedience of the order."
>
> Which is to say that if the errors and irregularities are such that *do* render the order absolutely void,

it is not necessary to apply to the court or judge. As yet this defendant has not complied with the order of punishment of April 7, 1941, because he is convinced that the plaintiff is an imposter and was imported, for a price, to substitute for and take over the functions of the plaintiff in the prior action after the defendant was unable to locate or contact the plaintiff in the prior action through the Commerce Trust Company or any other source.

The United States Supreme Court in *Sage* v. *Hampe*, 235 U. S. 99, holds,

> The law leaves the parties where it finds them and will afford no relief.

The parties to the prior action are, therefore, fixed and cannot be shifted. All parties to that action are residents of Jackson County, Missouri, and no new party can come in to assume their powers. The defendant is further convinced that the order filed March 5, 1940, is not a mere restraining order but a temporary injunction in which a bond is mandatory by law before it can operate. This action must go through the temporary injunction stage before it can be made permanent and in order to accomplish this an undertaking must be furnished by the plaintiff. He is further convinced that he has been ordered punished for violating a void order of which he has never been legally accused.

Defendant admits a quit-claim deed was filed by J. W. Hall of Jackson County, Missouri. Only at Jackson County, Missouri, J. W. Hall could give a valid deed. This deed has not been set aside or vacated and still stands valid. The title to realestate is a question of law and not of equity and injunction will not lie for possession of realestate. The plaintiff has an adequate remedy at law and should not be permitted to come into a court of equity with his unclean hands.

In the *City of Alma* v. *Loehr*, 42 Kan. 368, it is said:

> The function of a writ of injunction is to afford preventive relief; it is powerless to correct wrongs or injuries already committed. This is alphabetical law. The injunction provided in our code of civil procedure "is a command to refrain from a particular act."

Wherefore, it is respectfully submitted, for the reasons contained herein, that all judgments and orders rendered in the above captioned cause be set aside as wholly void.

Charles B. Eells,
Defendant.

State of Missouri, County of Jackson, SS.

AFFIDAVIT.

Charles B. Eells, defendant in the above-captioned cause, being first duly sworn, upon his oath deposes and says that he has read the above motion and that all the quotations from the records in both the prior action and this action contained therein are literal, and that all the statements made therein are true.

Charles B. Eells.

Subscribed and sworn to before me this 25th day of March, 1943.

J. K. Shinn, Jr.,
Notary Public.

Journal Entry.

Now on this 5th day of April, 1943, comes up for hearing the motion of the defendant herein to set aside as wholly void the following orders and judgments rendered by the court herein as follows:

1. Temporary injunction filed March 5, 1940.
2. Permanent injunction filed March 15, 1940.
3. Order of contempt and punishment filed April 7, 1941,

the plaintiff appearing by his attorney Hylton Harman; the defendant not appearing and not being represented

by counsel but submitting a brief attached to his said motion.

The court after considering the brief above-mentioned and hearing the argument of counsel and being fully advised within the premises, finds: That the said motion should be overruled.

Therefore It Is By the Court Ordered that the said motion should be and hereby is by the court overruled.

Harry W. Fisher,
Judge.

Notice of Appeal.

To Hylton Harman,
Attorney of Record for Plaintiff,
Huron Building, Kansas City, Kansas.

You are hereby notified that defendant in the above-captioned cause appeals to the Supreme Court of Kansas from the order of the Linn County District Court, filed on or about April 20, 1943, overruling the motion of defendant filed in said cause on or about March 26, 1943.

Said order of the District Court was not filed until after April 16, 1943, according to a communication from the Clerk of the Court to the defendant dated April 16, 1943, stating: "The order has not been filed, as I recall Mr. Harman was to draw the Journal Entry and mail it to Judge Fisher for his signature and return to this office."

(signed) Will H. Bayless,
Clerk of the District Court.
Charles B. Eells,
Defendant.

AFFIDAVIT.

State of Missouri, County of Jackson, ss:

Charles B. Eells, being first duly sworn, upon his oath deposes and says that a copy of the above notice of appeal was mailed to Hylton Harman, attorney of record for plaintiff, by placing same in the United States Post-office at Kansas City, Missouri, on April 21, 1943, addressed to him at Huron Building, Kansas City, Kansas.

Charles B. Eells.

Subscribed and sworn to before me this 21st of April, 1943.

Armour Braun,

(Seal) Notary Public.

My Commission expires August 19, 1944.

Extracts from the record of a prior action in the Linn County District Court entitled Hall v. Eells, case Number 8961, which have a bearing on the questions involved and referred to in foregoing motion.

PETITION.

Plaintiff for his first cause of action against the above named defendants, alleges:

That said plaintiff is a resident of Jackson County, Missouri, and that his postoffice address is Commerce Building, Kansas City, Missouri.

That said Commerce Trust Company * * * assigned said mortgage * * * on the 19th day of March, 1926, * * *.

That said assignment was duly filed for record on the 18th day of March, 1932, and recorded in book ....at page ....on said date. A copy of said assignment is hereto attached, made a part hereof and marked exhibit D.

AFFIDAVIT FOR SUMMONS BY PUBLICATION.

Affiant makes all the allegations of this petition a part hereof by reference the same as if fully set out herein.

Acknowledged this 23rd day of March, 1932.

ORDER.

The court * * * holds and decides * * * that said judgment should stand as valid and binding on all parties.

Dated this 26th day of July, 1935.

W. F. Jackson,
Judge.

AFFIDAVIT OF J. W. HALL.

That since about 1900, or prior thereto, he has been a resident of Wyandotte County, Kansas, and never at any time resided in Jackson County, Missouri. That for the past twenty seven (27) years he has operated a grocery store at 1121 Pacific * * * in Kansas City, Kansas.

DEPOSIT ON COSTS AT TIME OF FILING CASE NO. 8961.

$25 paid by Commerce Trust Company.

Extracts from Plaintiff's Petition in Case No. 9892 that have a bearing on the questions involved in Appellant's Motion.

Comes now plaintiff and states: That he is a resident of Wyandotte County, Kansas, and that the defendant is a resident of Jackson County, Missouri.

That on or about the 21st day of June, 1934, this plaintiff received a sheriff's deed from the sheriff of Linn County, Kansas, to the following described property, to wit:

> The West half (1/2) of the Northwest Quarter (1/4), the Northwest Quarter (1/4) of the Southeast Quarter (1/4) and the East Half (1/2) of the Southwest Quarter (1/4) all in Section 32, Township 20, Range 24 * * *.

That said sheriff's deed was issued in the case of J. W. Hall, plaintiff, v. Charles B. Eells, defendant, case No. 8961.

CONCERNING PRAECIPE OF DEFENDANT.

Mound City, Kansas
Feb. 19, 1940.

Mr. C. B. Eells,
Kansas City, Mo.

Dear friend:

The two cases, Hall v. Eells, Nos. 9891 and 9892 are set for hearing on February 29th at 10 A M.

Will issue your subpoena's the latter part of this week.

We are getting quite a snow storm here again this morning.

Yours truly,
(signed) C. B. Platt,
Dist. Clerk.

List of Witnesses and Papers Subpoenaed As Stated Above by the Clerk of the Court.

NONE.

Full and Verbatim Transcript of All Evidence Produced by both the Plaintiff and Defendant in Open Court, March 15th, 1940.

NONE.

For extracts from the "Citation," "Affidavit" and "Accusation," see Question No. 5 of Appellant's Motion.

Verbatim Copy of Bond Required by Law of Plaintiff and Names of His Sureties.

NONE.

Temporary Injunction filed March 5, 1940, effective March 7, 1940 (if a bond had been furnished, R. S. 60-1114).

Temporary Injunction perpetuated March 15, 1940.

Deposit for Costs in Case No. 9892, $15.

Certification.

The foregoing is a true and correct abstract of the record in the above entitled case.

CHARLES B. EELLS,
Appellant.